

REDACTED

BEFORE THE DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the  
Accusation Against:

Kenneth C. Smith, M.D.  
Certificate # G-3472

Respondent.

D-5112


DECISION

The attached Stipulation is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on March 7, 1994.

IT IS SO ORDERED February 8, 1994.

DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA



THERESA CLAASSEN, Secretary-Treasurer

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 JANA L. TUTON  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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Telephone: (916) 327-7852  
7  
8 Attorneys for Complainant  
Medical Board of California

9  
10 BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
11 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

12 In the Matter of the Accusation ) No. D-5112  
13 Against )  
14 KENNETH C. SMITH, M.D. )  
P. O. Box AR )  
15 South Lake Tahoe, CA 95705 )  
16 Physician and Surgeon's )  
Certificate No. G-3472 )  
17 Respondent. )  
18

19 The parties to this action stipulate and agree as  
20 follows:

- 21 1. Respondent Kenneth C. Smith, M.D. (hereinafter  
22 "respondent"), was heretofore issued Physician and Surgeon  
23 Certificate No. G-3472 to practice medicine under the laws of the  
24 State of California. Said certificate is presently current and  
25 in full force and effect.  
26 2. On or about February 23, 1993, an accusation  
27 bearing number D-5112 was filed by Dixon Arnett, Executive

1 Director of the Medical Board of California, in his official  
2 capacity as such. The accusation alleged causes of disciplinary  
3 action against respondent, and is incorporated hereby by  
4 reference as though fully set forth at this point. Accusation  
5 number D-5112 alleges that respondent is subject to disciplinary  
6 action pursuant to Business and Professions Code section 2234.  
7 Respondent was duly and properly served with accusation number D-  
8 5112, by certified mail.

9           3. Respondent has retained Catherine L. DiCamillo, as  
10 his attorney in this matter. Respondent has fully discussed with  
11 his counsel the charges and allegations of violation of the  
12 California Business and Professions Code alleged in accusation  
13 number D-5112 and has been fully advised of his rights under the  
14 Administrative Procedure Act of the State of California,  
15 including his right to a formal hearing and opportunity to be  
16 defended against the charges contained therein, and  
17 reconsideration and appeal of any adverse decision that might be  
18 rendered following said hearing. Respondent knowingly and  
19 intelligently waives his rights to a hearing, reconsideration,  
20 appeal and to any and all other rights which may be accorded him  
21 pursuant to the Administrative Procedure Act regarding the  
22 charges contained in accusation number D-5112, subject to the  
23 provisions of paragraph 6 herein.

24           4. Respondent admits for the purpose of this  
25 proceeding and any other proceeding before the Board or any other  
26 action taken by and before any governmental body responsible for  
27 licensing that he is subject to disciplinary action for violation

1 of Business and Professions Code section 2234 for the following:

2           Respondent is subject to disciplinary action for  
3 violation of section 2242, subdivision (a), of the Code as  
4 follows:

5           A. On or about May 17, 1990, respondent  
6 prescribed Tylenol with codeine #3, a dangerous drug within the  
7 meaning of Business and Professions Code section 4211 to D  
8 L, also known as D K, without a good faith prior  
9 examination and medical indication therefor.

10           B. On or about July 26, 1990, respondent  
11 prescribed Tylenol with codeine #3, a dangerous drug within the  
12 meaning of Business and Professions Code section 4211 to D  
13 L, also known as D K, without a good faith prior  
14 examination and medical indication therefor.

15           C. On or about September 11, 1990, respondent  
16 prescribed Tylenol with codeine #3, a dangerous drug within the  
17 meaning of Business and Professions Code section 4211 to D  
18 L, also known as D K, without a good faith prior  
19 examination and medical indication therefor.

20           D. On or about September 11, 1990, respondent  
21 saw D L, also known as D K, as a patient and  
22 respondent falsely wrote in the patient's chart, in violation of  
23 section 2261 of the Code, that patient K complained of  
24 headaches.

25           E. On or about September 12, 1990, respondent  
26 prescribed Tylenol with codeine #3, a dangerous drug within the  
27 meaning of Business and Professions Code section 4211, to M

1 R [REDACTED], also known as J [REDACTED] D [REDACTED], without a good faith prior  
2 examination and medical indication therefor.

3 F. On or about November 8, 1990, respondent  
4 prescribed Tylenol with codeine #3, a dangerous drug within the  
5 meaning of Business and Professions Code section 4211 to M [REDACTED]  
6 R [REDACTED], also known as J [REDACTED] D [REDACTED], without a good faith prior  
7 examination and medical indication therefor.

8 G. On or about September 12, 1990, respondent  
9 saw M [REDACTED] R [REDACTED], also known as J [REDACTED] D [REDACTED], as a patient and  
10 respondent falsely wrote in the patient's chart, in violation of  
11 section 2261 of the Code, that the patient wanted codeine for  
12 pain.

13 5. Based on the foregoing stipulation, the Division  
14 of Medical Quality, Medical Board of California, may issue the  
15 following order:

16 A. The license to practice medicine and surgery  
17 in the State of California heretofore issued to respondent is  
18 hereby revoked, provided, however, that execution of this order  
19 of revocation is stayed and respondent is placed on an unlimited  
20 term of probation upon the following terms and conditions:

21 1. Respondent is prohibited from all  
22 patient contact including examination, diagnosis and treatment of  
23 patients.

24 2. Should respondent petition the Division  
25 of Medical Quality to resume the practice of medicine and the  
26 petition is granted, respondent shall take and pass an oral or  
27 written exam, in a subject to be designated and administered by

1 the Division or its designee. If respondent fails this  
2 examination, respondent must take and pass a re-examination  
3 consisting of a written as well as an oral examination. The  
4 waiting period between repeat examinations shall be at three  
5 month intervals until success is achieved. Respondent shall pay  
6 the cost of all examinations.

7 Respondent shall not practice medicine  
8 until respondent has passed the required examination and has been  
9 so notified by the Division in writing.

10 3. Respondent shall not prescribe,  
11 administer, dispense, order, or possess any controlled substances  
12 as defined in the California Uniform Controlled Substances act.

13 4. Respondent shall not seek reinstatement  
14 of his Drug Enforcement Administration Permit which has been  
15 surrendered.

16 5. Respondent shall obey all federal, state  
17 and local laws, and all rules governing the practice of medicine  
18 in California.

19 6. Respondent shall submit quarterly  
20 declarations under penalty of perjury on forms provided by the  
21 Division, stating whether there has been compliance with all  
22 conditions of probation.

23 7. Respondent shall comply with the  
24 Division's probation surveillance program.

25 8. Respondent shall appear in person for  
26 interviews with the Division's medical consultant upon request at  
27 various intervals and with reasonable notice.

1                   9.    The period of probation shall not run  
2 during the time respondent is residing or practicing outside the  
3 jurisdiction of California.  If, during probation, respondent  
4 moves out of the jurisdiction of California to reside or practice  
5 elsewhere, respondent is required to immediately notify the  
6 Division in writing of the date of departure, and the date of  
7 return, if any.

8                   10.  Upon successful completion of probation,  
9 respondent's certificate will be fully restored.

10                   11.  If respondent violates probation in any  
11 respect, the Division after giving respondent notice and the  
12 opportunity to be heard, may revoke probation and impose the  
13 revocation that was stayed.  If an accusation or petition to  
14 revoke probation is filed against respondent during probation,  
15 the Division shall have continuing jurisdiction until the matter  
16 is final, and the period of probation shall be extended until the  
17 matter is final.

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1           6. It is agreed that the terms set forth herein shall  
2 be null and void and not binding upon the parties hereto unless  
3 approved by the Medical Board of California of the State of  
4 California.


5                           DANIEL E. LUNGREN, Attorney General  
6                           of the State of California

7  
8 DATED: 9-1-93

  
DANIEL J. TURNER  
Deputy Attorney General

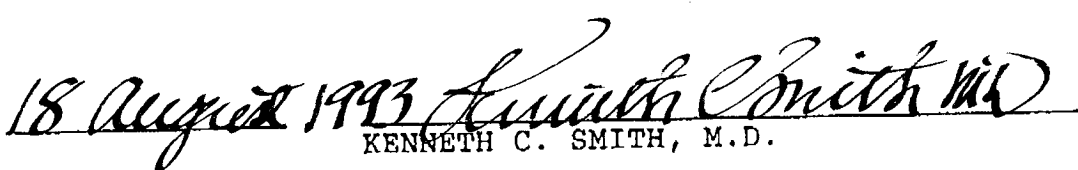
9                           Attorneys for Complainant

10  
11  
12 DATED: Aug. 25, 1993

  
CATHERINE L. DICAMILLO

13                           Attorney for Respondent

14  
15  
16 DATED: 18 August 1993

  
KENNETH C. SMITH, M.D.

17                           Respondent  
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REDACTED

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of the State of California  
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Attorneys for Complainant

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	No. D-5112
Against:	)	
	)	<u>ACCUSATION</u>
KENNETH C. SMITH, M.D.	)	
P.O. Box AR	)	
South Lake Tahoe, CA. 95705	)	
	)	
Physician and Surgeon's	)	
Certificate No. G-3472	)	
	)	
Respondent.	)	

COMPLAINANT, DIXON ARNETT, alleges as follows:

1. He is the Executive Director of the Medical Board of California (hereinafter "Board") and makes and files this accusation solely in his official capacity.
2. On or about January 26, 1956, Kenneth C. Smith, M.D. (hereinafter "respondent") was issued physician and surgeon's license number G-3472 by the Board. At all times pertinent herein the certificate was in full force and effect and has been in delinquent status with an expiration date of April 20, 1992.

1           3.     Sections 2220 and 2234 of the Business and  
2 Professions Code (hereinafter "Code") provide, in pertinent part,  
3 that the Division of Medical Quality may take action against the  
4 holder of a physician's and surgeon's certificate who is guilty  
5 of unprofessional conduct.

6           4.     Under Business and Professions Code section  
7 118(b), the expiration or cancellation of a license issued by the  
8 Medical Board shall not, during any period in which it may be  
9 renewed, restored, reissued, or reinstated, deprive the Board of  
10 its authority to institute to continue a disciplinary action.

11                 Under Business and Professions Code section 2428, a  
12 license issued by the Medical Board may be renewed, reissued,  
13 reinstated or restored at any time within five years.

14           5.     Section 2261 of the Code provides, in pertinent  
15 part, that knowingly making or signing any document directly or  
16 indirectly related to the practice of medicine which falsely  
17 represents the existence or nonexistence of a state of facts  
18 constitutes unprofessional conduct.

19           6.     Section 2242, subdivision (a), provides, in  
20 pertinent part, that prescribing dangerous drugs as defined in  
21 section 4211 without a good faith prior examination and medical  
22 indication therefor constitutes unprofessional conduct.

23           7.     At all times mentioned herein Tylenol with codeine  
24 was a dangerous drug within the meaning of section 4211 of the  
25 Code.

26     ///

27     ///

D. K.

8. Respondent is subject to disciplinary action for violation of section 2242, subdivision (a), of the Code as follows:

A. On or about May 17, 1990, respondent prescribed Tylenol with codeine #3, a dangerous drug within the meaning of Business and Professions Code section 4211 to D. L., also known as D. K., without a good faith prior examination and medical indication therefor.

B. On or about July 26, 1990, respondent prescribed Tylenol with codeine #3, a dangerous drug within the meaning of Business and Professions Code section 4211 to D. L., also known as D. K., without a good faith prior examination and medical indication therefor.

C. On or about September 11, 1990, respondent prescribed Tylenol with codeine #3, a dangerous drug within the meaning of Business and Professions Code section 4211 to D. L., also known as D. K., without a good faith prior examination and medical indication therefor.

9. On or about September 11, 1990, respondent saw D. L., also known as D. K., as a patient and respondent falsely wrote in the patient's chart, in violation of section 2261 of the Code, that patient K. complained of headaches.

J. D.

10. Respondent is subject to disciplinary action for violation of section 2242, subdivision (a) of the Code as follows:

1                   A.    On or about September 12, 1990, respondent  
2 prescribed Tylenol with codeine #3, a dangerous drug within the  
3 meaning of Business and Professions Code section 4211, to M [REDACTED]  
4 R [REDACTED], also known as J [REDACTED] D [REDACTED], without a good faith prior  
5 examination and medical indication therefor.

6                   B.    On or about November 8, 1990, respondent  
7 prescribed Tylenol with codeine #3, a dangerous drug within the  
8 meaning of Business and Professions Code section 4211 to M [REDACTED]  
9 R [REDACTED], also known as J [REDACTED] D [REDACTED], without a good faith prior  
10 examination and medical indication therefor.

11                   11. On or about September 12, 1990, respondent saw  
12 M [REDACTED] R [REDACTED], also known as J [REDACTED] D [REDACTED], as a patient and  
13 respondent falsely wrote in the patient's chart, in violation of  
14 section 2261 of the Code, that the patient wanted codeine for  
15 pain.

16                   WHEREFORE, complainant prays that the Division of  
17 Medical Quality hold a hearing on the matters alleged herein and  
18 following said hearing issue a decision:

19                   1.    Suspending or revoking the license issued to  
20 respondent Kenneth C. Smith, M.D.; and

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2. Taking such other and further action as it deems proper.

DATED: February 23, 1993



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DIXON ARNETT  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
  
Complainant